

# Agenda

## Item #2



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: February 12, 2010

Re: Request for Advisory Opinion from Rep. Jon Hinck

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Jon Hinck is serving in his second term in the Maine House of Representatives. He is the House Chair of the Joint Standing Committee on Utilities and Energy. Two days ago, he requested an advisory opinion from the Commission:

I write to request an advisory opinion if, after review of the facts, you and the Commission feel that it is warranted. The matter arises in connection with my service in the Maine State Legislature and my wife's employment in private law practice.

To be more specific, my wife Juliet Browne represents a range of clients in regulated and unregulated industries that request and secure environmental permits and do other business with the state. Her clients include companies that develop wind power facilities. Some matters related to the development of wind power come to the state legislature, including to my committee, the Utilities & Energy Committee. I would like to know if there are any conflicts of interest presented by my joining in the shaping of the legislation and voting on it, either in committee or on the floor of the House.

Some opponents of wind power have suggested on the websites of newspapers and a political bulletin board that governmental consideration of wind power projects is now tilted in favor of development because of the support of a number of officials. A few have mentioned Rep. Hinck and his wife by name, and have alleged that he has acted in a conflict of interest. This may be part of the rationale for his inquiry.

This memo summarizes the facts presented by Rep. Hinck, and provides an introduction to the legislative ethics law and a brief perspective from the Commission staff.

**Summary of Facts Presented by Rep. Jon Hinck**

After Rep. Hinck contacted me by telephone explaining his interest in an advisory opinion, I suggested that he make the request in writing, describe his wife's law practice,

identify any 2010 legislation that will come before his committee and that would affect his wife's clients, and state whether the legislation would have any direct financial benefit for him or his wife. In his statement of facts concerning wind power, he explains the following.

Rep. Hinck is married to Juliet Browne. She is an attorney and chair of the Environmental Law Practice Group at Verrill Dana, LLP. A significant portion of her practice consists of seeking environmental permits on behalf of her clients. She files permit applications with municipalities and with the state Department of Environmental Protection and the Land Use Regulation Commission. These state agencies are overseen by the Joint Standing Committee on Natural Resources, not Rep. Hinck's committee.

Rep. Hinck was employed for three years as a staff attorney with the Natural Resources Council of Maine. The position included some lobbying, most often before the Natural Resources Committee. When Rep. Hinck was elected to the State Legislature in 2006, he was assigned to the Utilities and Energy Committee because of concerns raised by another Legislator that he would be in a conflict if he were assigned to the Natural Resources Committee.

Because of Ms. Browne's expertise, in 2007 Governor John Baldacci appointed her to a Task Force on Wind Power Development. In 2008, the work of the task force resulted in L.D. 2283 (123<sup>rd</sup> Legislature), which was assigned to the Utilities and Energy Committee. The bill was enacted unanimously in both chambers. Rep. Hinck voted on L.D. 2283. He writes that the bill "did not result in any direct financial benefit or detriment to me or to my wife."

Rep. Hinck states that "under many circumstances, I would not have a clear understanding of what bills might affect the companies my wife has as clients." He has identified seven bills that will come before the Utilities Committee in 2010 and that "may give rise to some financial impact" on clients that his wife has represented at various times. Based on the bill titles, it appears that at least two of them (L.D. 1504 and L.D. 1680) relate to wind energy.

Rep. Hinck states that none of these bills will have any direct financial benefit or detriment to him or his wife. He says that he evaluates bills based solely on his view of the merits of the legislation.

### **Commission's Role in Advising Legislators on Conflicts of Interest**

In the Legislative Ethics Law, "[t]he commission has authority ... [t]o issue, on request of any Legislator on an issue involving that Legislator, or on its own motion, written advisory opinions and guidance on problems or questions involving possible violations of legislative ethics ...." (1 M.R.S.A. § 1013(1)(A)) Paragraph 2(A) states the following procedures for issuing advisory opinion:

A. Requests for advisory opinions by members of the Legislature must be filed with the commission in writing and signed by the Legislator requesting the opinion and must contain such supporting data as the commission requires. Commission staff shall inform a Legislator upon that Legislator's request for an advisory opinion that written opinions issued by the commission are public and are submitted to the Clerk of the House and the Secretary of the Senate and entered into the legislative record. When preparing an advisory opinion on its own motion, the commission shall notify the Legislator concerned and allow the Legislator to provide additional information to the commission. In preparing an advisory opinion, either upon request or on its own motion, the commission may make such an investigation as it determines necessary. A copy of the commission's advisory opinion must be sent to the Legislator concerned and to the presiding officer of the legislative body of which the Legislator is a member.

The Commission receives few requests for advisory opinions. Our records indicate that in the last seven years, the Commission has issued five advisory opinions. Legislators have other source of advice as well. On occasion, the Office of the Maine Attorney General has offered advisory opinions on conflicts of interest. Some members turn to the presiding officers of their chambers or to their colleagues in the Legislature.

For purposes of the biennial ethics seminar for Legislators, the Attorney General's Office had compiled the most relevant opinions of the Commission and the Attorney General. Since December 2006, those opinions have been summarized in the seminar book and have been posted in full on the Commission's website, so that anyone may access them at any time.

## **Standards for a Conflict of Interest in Maine's Legislative Ethics Law**

### *Statement of Purpose*

The statement of purpose for the legislative ethics law is attached. (1 M.R.S.A. § 1011) The statement acknowledges that members of the Maine Legislature serve on a part-time basis, and must continue their careers and support their families while serving in the Legislature. It recognizes that conflicts of interest are "almost inevitable" for part-time Legislators as they encounter legislation that relates to their professions. The statement assigns the primary responsibility for avoiding a conflict of interest with the individual Legislator: "The Legislature cannot legislate morals and the resolution of ethics problems must indeed rest largely in the individual conscience."

The Maine legislative ethics law defines "conflict of interest" at 1 M.R.S.A. § 1014(1) (attached). Paragraphs (A) through (F) list six situations which involve a conflict of interest. Three of these paragraphs (A, E, and F) relate to a potential conflict of interest arising from the employment of a Legislator or a member of the Legislator's immediate family.

*Paragraph (1)(A)*

Paragraph (1)(A) describes a situation in which a Legislator would be in a conflict of interest due to legislation affecting an “enterprise” or “person” with which the Legislator has a “close economic association.”

A. Where a Legislator or a member of his immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise which would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation.

The term “close economic association” is defined (see attachment). Here, Ms. Browne would be in a close economic association with both Verrill Dana, LLP and her clients.

The staff finds the language in paragraph 1(A) difficult to apply because of its awkward construction. In 1983, the Maine Attorney General applied this paragraph to a question posed by Elizabeth H. Mitchell (then a State Representative) concerning her duty to recuse herself because of her husband’s legal work. The opinion is attached for your background information.

*Paragraphs 1(E) and (F)*

Paragraphs 1(E) and (F) also define situations that involve a conflict of interest relating to the Legislator’s employment or profession. Although divided into two paragraphs, the provisions actually cover a number of situations, most of which involve a personal benefit or loss to the Legislator or family member, not a benefit or loss to the Legislator’s employer or client.

E. When a Legislator or a member of the Legislator's immediate family accepts or engages in employment that could impair the Legislator's judgment, or when the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded the Legislator or a member of the Legislator's immediate family with intent to influence the performance of the Legislator's official duties, or when the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community; and

F. When a Legislator or a member of the Legislator's immediate family has an interest in legislation relating to a profession, trade, business or

employment in which the Legislator or a member of the Legislator's immediate family is engaged and the benefit derived by the Legislator or a member of the Legislator's immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.

Paragraph 1(E) also contains the standard that a conflict of interest exists “[w]here a Legislator ... engages in employment which could impair the Legislator’s judgment.” The standard of impairing the Legislator’s judgment is fairly subjective, however, and therefore difficult for the Commission to apply to a given factual situation.

### **Recusal as a Remedy for a Conflict of Interest**

When a member of the Maine Legislature is in a conflict of interest with respect to legislation, the Legislator must recuse himself or herself:

A Legislator engages in a violation of legislative ethics if that Legislator votes on a question in connection with a conflict of interest in committee or in either body of the Legislature or attempts to influence the outcome of that question.

(1 M.R.S.A. § 1014(1)) Recusal can be an effective means of curing a conflict of interest, but in my opinion it has two downsides in the context of the Maine Legislature. Legislators bring to the institution knowledge and expertise that benefits policy-making. If a member is prohibited from influencing legislation, the body is deprived of that member’s experience and understanding of the subject matter.

Also, when a member of the Legislature recuses himself or herself from a particular matter, the residents of the Legislator’s district are deprived of a voice in that matter. Unlike recusals that occur in other public offices, there is no alternate or substitute representative that steps into the shoes of the recused Legislator to speak for the interests of his or her district.

### **Advisory Opinions on Conflict of Interest**

To provide you with some background on how § 1014(1) has been applied in the past, I have attached three decisions of the Maine Attorney General and the Ethics Commission.

#### *1983 Opinion of the Maine Attorney General Concerning Elizabeth H. Mitchell*

In 1983, Elizabeth H. Mitchell (then a State Representative) requested advice from the Ethics Commission on whether she could vote on a bill that would limit the cost of health care in Maine. Her husband, an attorney, had advised a local physicians’ practice on the legal effects of the bill and drafted amendments to the bill for the practice to communicate directly to their Legislators. The Commission advised Rep. Mitchell that

voting on the bill would constitute a conflict, but Maine Attorney General James E. Tierney disagreed.

The Attorney General applied § 1014(1)(A) to the factual circumstances in that case. After reviewing the legislative history of the statute, he observed that

[I]t is clear that the Legislature never intended that a member of either House must be disqualified from voting on a proposal merely because she or a member of her immediate family is compensated for work performed for an employer or a client who might be affected by the legislation. The “direct substantial personal financial benefit” referred to in 1 M.R.S.A. § 1014(1)(A) must involve a financial reward separate and distinct from the remuneration one receives as an employee or agent for services rendered.

The Attorney General concluded that

In short, § 1014(1)(A) does not prevent a Legislator from voting on a measure *unless she or a member of her immediate family will receive a financial benefit* either directly or through a third party, by virtue of the proposed legislation. (italics added)

The opinion determined that voting on the bill presented no conflict for Rep. Mitchell, because her husband would not receive a personal financial benefit from passage or defeat of the bill.

*1992 Opinion of the Maine Attorney General to Representatives Santo DiPietro and Jeffrey Butland*

In 1992, Assistant Attorney General William R. Stokes responded to two members of the Maine House of Representatives who had asked about the obligations of Legislators who perform legal work in the area of workers’ compensation law to recuse themselves from upcoming workers’ compensation legislation.

The opinion applied § 1014(1)(F). AAG Stokes advised that merely working in the area of workers’ compensation would not require a member of the Legislature to recuse himself or herself from the legislation. Rather, the member would only be required to withdraw from influencing the legislation if he or she received a benefit from the bill that was “unique and distinct” from other attorneys engaged in workers’ compensation law.

*2007 Opinion of the Maine Ethics Commission concerning Rep. Thomas B. Saviello*

In 2007, Rep. Thomas B. Saviello inquired whether he could vote on a specific bill relating to penalties for oil spills. As the Environmental Manager of a paper mill, he oversaw the mill’s compliance with the oil spill laws, including the requirement to report spills to the Maine Department of Environmental Protection (DEP). The Commission received testimony from a concerned environmental organization that the legislation

could enhance the Representative's reputation within his company. Roughly one year earlier, Rep. Saviello had been the subject of a complaint filed with the Commission alleging that he had been in a conflict of interest with respect to legislation that related to his duties as Environmental Manager.

The Commission analyzed the question under § 1014(1)(F). It concluded that Rep. Saviello would not derive a financial benefit from the bill that was unique and distinct from persons engaged in similar professions or trades. Therefore, the Commission advised that it would not be a conflict for Rep. Saviello to influence the legislation.

### **Views of the Commission Staff**

The staff would be pleased to perform any task you would like in connection with Rep. Hinck's request, including gathering further factual information or drafting an opinion if you believe one is appropriate.

In my experience as staff director for the Commission, it is not unusual for there to be a "disconnect" between public expectations about what is a legislative conflict of interest and the more narrow definition in 1 M.R.S.A. § 1014(1). In 2007, the Legislature considered a bill proposed by a study commission to broaden the definition of a conflict of interest, and the Legislature declined to enlarge the definition. In my view, the Legislature has adopted the view that when a Legislator is presented with a bill that relates to the profession of that Legislator or a member of the Legislator's immediate family, the Legislator may generally vote on the bill except when it would result in a "unique and distinct benefit" to the Legislator or his or her immediate family. Some have expressed that this conflict of interest standard that is too narrow. Nevertheless, it is the standard for recusal that the Legislature has set for itself and it is the standard that the Commission is charged with applying.

Because of time constraints, the Commission staff cannot offer further analysis in this memo. My view is that if the Commission agrees with the 1983 analysis of the Attorney General with respect to the Elizabeth H. Mitchell, it is unlikely that Rep. Hinck will be in a conflict of interest with respect to 2010 legislation. The determination would depend on the details and impact of each bill that he encounters during his legislative service. The primary responsibility for avoiding a conflict rests with Rep. Hinck. The legislative ethics law requires him to keep in mind the standards of 1 M.R.S.A. § 1014(1) when reviewing legislation and to avoid influencing any bills that would have a unique and distinct benefit for him or his wife.

Thank you for considering this memorandum.





**Jon Hinck**  
142 Pine Street  
Portland, ME 04102  
Cell: (207) 450-0003

# HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0002

**RECEIVED** (207) 287-1400  
TTY: (207) 287-4469

FEB 11 2010

**MAINE ETHICS COMMISSION**

Jonathan Wayne  
Executive Director  
Maine Ethics Commission  
135 State House Station  
Augusta, Maine 04333-0135

Re: Advisory Opinion on Possible Ethics Matter

Dear Director Wayne:

I write to request an advisory opinion if, after review of the facts, you and the Commission feel that it is warranted. The matter arises in connection with my service in the Maine State Legislature and my wife's employment in private law practice.

To be more specific, my wife Juliet Browne represents a range of clients in regulated and unregulated industries that request and secure environmental permits and do other business with the state. Her clients include companies that develop wind power facilities. Some matters related to the development of wind power come to the state legislature, including to my committee, the Utilities & Energy Committee. I would like to know if there are any conflicts of interest presented by my joining in the shaping of the legislation and voting on it, either in committee or on the floor of the House.

Thank you for the courtesy of reviewing this matter and any advice that you can offer.

Very truly yours,

Jon Hinck  
State Representative

Rep. Hinck Statement of Facts Re: Wind Power

I was first elected to the Maine Legislature in 2006.

My wife Juliet Browne has been employed as an attorney with Verrill Dana, a limited liability partnership, since 1996. She has been a member of the partnership since 1999. She is paid solely with proceeds of the partnership based on a formula finalized once a year at year's end. Juliet chairs the firm's Environmental Law Practice Group. Her practice includes a significant concentration on environmental permitting.

Over the years, my wife has represented such companies as Bangor Hydro, Maritimes and Northeast Pipeline, International Paper (now Verso), and Waste Management. This work is typically on environmental permitting of projects from pipelines to landfills and typically in connection with matters before agencies that come before the Natural Resources Committee. She has worked with and appeared before the DEP and LURC as well as courts both state and federal. A summary of her practice can be found at:  
<http://www.verrilldana.com/AttorneyView.aspx?Id=85>

From 2003 to 2006 I was employed with the Natural Resources Council of Maine as staff attorney. My work there included projects dealing with toxic substances and renewable energy. Starting in 2003 I conducted research on the environmental impacts and benefits of wind power. As part of my job, I lobbied the legislature most frequently, however, on matters before the Natural Resources Committee. For example, I led an effort to gain passage of a law requiring manufacturer responsibility for electronic waste. On one occasion I recall, I testified on a wind power bill before the Utilities and Energy Committee.

In 2004, Juliet was retained by UPC Wind Management (now First Wind) to represent the company in connection with an appeal to the Board of Environmental Protection of the DEP's decision to issue the company a permit for the Mars Hill development. Verrill Dana had done some prior real estate work for UPC. The appeal before the DEP was successful. Juliet has continued to do legal work for UPC to the present.

In 2005, Juliet was retained by TransCanada Corporation to assist the company in getting permits needed to build a wind power development in Western Maine. She has continued to do legal work for TransCanada to the present. She has also done legal work for other, smaller wind power developers in Maine.

After my election to the Maine Legislature in 2006, Speaker Cummings took up the question of my committee assignment. Newly elected State Rep. Abby Holman expressed the view to the Speaker that my assignment to the Natural Resources Committee would present a conflict due to my own prior work lobbying the committee. With that objection in mind, and in accord with one of my own expressed preferences, Speaker Cummings assigned me to the Utilities and Energy Committee.

By Executive Order 31 FY 06/07, dated May 8, 2007, Governor Baldacci established the Governor's Task Force on Wind Power Development. The core duties included examination of the regulatory processes, review criteria and financing options currently applicable to wind

power projects proposed in Maine. Juliet was selected to serve and did serve as one of some 16 members of the Task Force.

In 2008, my second year in the legislature, L.D. 2283, An Act To Implement Recommendations of the Governor's Task Force on Wind Power Development was assigned to my committee. Juliet attended a hearing on the bill but did not testify. The bill was voted out with a unanimous Ought to Pass as amended. It passed in the House with Yeas 139 and Nays 0. The final vote in the Senate was 34 Yeas and 0 Nays. I voted with the majority in both the committee and on the floor of the House. I do not know if it has benefited any clients of my wife. It did not result in any direct financial benefit or detriment to me or to my wife.

Juliet has assisted wind power clients in getting approval of state and local permits for the siting of facilities. She has appeared before DEP (and BEP) and LURC in connection with wind power issues.

Under many circumstances I would not have a clear understanding of what bills might affect the companies my wife has as clients. Sometimes lobbyists who represent these companies testify before the committee, present information to me and other committee members or talk to me directly. Sometimes my wife mentions to me a bill that she is aware of that may be of interest to her clients.

Lobbyists representing wind power companies, including one or more clients of my wife, have discussed with me the following bill pending before my committee this session. (I have also discussed the bill with my former supervisor at NRCM.)

L.D. 1504 An Act To Require That Expedited Wind Energy Development Projects Provide a Tangible Benefit to Maine Ratepayers in the Form of Discounts to Future Electric Rates.

Nothing that happens with respect to this bill will result in any direct financial benefit or detriment to me or to my wife. I do not have any information or knowledge about any direct financial benefit or detriment that might arise for a wind power or other company in connection with this bill.

As I look at the bills before my committee this session I can come up with a number that may give rise to some financial impact on clients that my wife has represented at various times. These bills might include the following:

LD 1680 An Act to Assist in Reviewing Wind Energy Applications

LD 1720 An Act Related to Qualified Waste-to-energy Power

LD 1682 An Act To Amend the Electric Utility Industry Laws as They Relate to Renewable Resources

LD 1581 An Act Concerning Electricity Customers Whose Bills Increase as a Result of the Implementation of Energy Conservation or Energy Efficiency Measures

LD 1571 An Act To Ensure That Maine's Energy Corridor Policy Does Not Harm Maine's Renewable Power Development

LD 1350 An Act to Establish the Maine Transmission Mitigation Fund



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

February 12, 2010

**By Regular Mail and E-Mail**

Rep. Jon Hinck  
2 State House Station  
Augusta, ME 04333

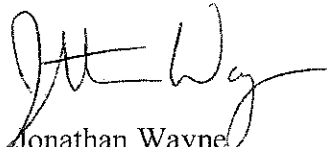
Dear Rep. Hinck:

Thank you for the detailed information that was included in your February 10 letter requesting an advisory opinion from the Commission on Governmental Ethics and Election Practices. The Commission will meet on February 25, 2010 at 9:00 a.m. I will schedule your request as first substantive matter on the agenda for that meeting so that you can attend the meeting and return to the Legislature. The meeting will be held at the Commission's office at 45 Memorial Circle (the rotary at Western Avenue and State Street).

If the Commission issues a written opinion in response to your request, it will be a public record that is submitted to the Clerk of the House and entered into the legislative record. The Commission may have questions for you at the February 25 meeting and may need additional information in order to render an opinion.

If you have any questions, please call me at 287-4179 or e-mail me at [Jonathan.Wayne@maine.gov](mailto:Jonathan.Wayne@maine.gov).

Sincerely,

  
Jonathan Wayne  
Executive Director

## **SUBCHAPTER II**

### **LEGISLATIVE ETHICS**

#### **1 § 1011. Statement of purpose**

The Maine Legislature enjoys a high reputation for progressive accomplishment. The vast majority of its members are public officers of integrity and dedication, seeking at all times to maintain high standards of ethical conduct.

The public interest is best served by attracting and retaining in the Legislature men and women of high caliber and attainment. The public interest will suffer if unduly stringent requirements deprive government "of the services of all but princes and paupers."

Membership in the Legislature is not a full-time occupation and is not compensated on that basis; moreover, it is measured in two-year terms, requiring each member to recognize and contemplate that his election will not provide him with any career tenure.

Most Legislators must look to income from private sources, not their public salaries, for their sustenance and support for their families; moreover, they must plan for the day when they must return to private employment, business or their professions.

The increasing complexity of government at all levels, with broader intervention into private affairs, makes conflicts of interest almost inevitable for all part-time public officials, and particularly for Legislators who must cast their votes on measures affecting the lives of almost every citizen or resident of the State. The adoption of broader standards of ethics for Legislators does not impugn either their integrity or their dedication; rather it recognizes the increasing complexity of government and private life and will provide them with helpful advice and guidance when confronted with unprecedented or difficult problems in that gray area involving action which is neither clearly right nor clearly wrong.

If public confidence in government is to be maintained and enhanced, it is not enough that public officers avoid acts of misconduct. They must also scrupulously avoid acts which may create an appearance of misconduct.

The Legislature cannot legislate morals and the resolution of ethical problems must indeed rest largely in the individual conscience. The Legislature may and should, however, define ethical standards, as most professions have done, to chart the areas of real or apparent impropriety.

#### **1 § 1012. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Close economic association.** "Close economic association" means the employers, employees, partners or clients of the Legislator or a member of the Legislator's immediate family; corporations in which the Legislator or a member of the Legislator's immediate family

is an officer, director or agent or owns 10% or more of the outstanding capital stock; a business which is a significant unsecured creditor of the Legislator or a member of the Legislator's immediate family; or a business of which the Legislator or a member of the Legislator's immediate family is a significant unsecured creditor.

**1-A. Associated organization.** "Associated organization" means any organization in which a Legislator or a Legislator's spouse is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity.

**2. Commission.** "Commission" means the Commission on Governmental Ethics and Election Practices.

**2-A. Domestic partner.** "Domestic partner" means the partner of a Legislator who:

- A. Has been legally domiciled with the Legislator for at least 12 months;
- B. Is not legally married to or legally separated from an individual;
- C. Is the sole partner of the Legislator and expects to remain so; and
- D. Is jointly responsible with the Legislator for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property.

**3. Employee.** "Employee" means a person in any employment position, including public or private employment, employment with a nonprofit, religious, charitable or educational organization, or any other compensated service under an expressed, implied, oral or written contract for hire, but does not include a self-employed person.

**4. Gift.** "Gift" means anything of value, including forgiveness of an obligation or debt, given to a person without that person providing equal or greater consideration to the giver. "Gift" does not include:

- A. Gifts received from a single source during the reporting period with an aggregate value of \$300 or less;
- B. A bequest or other form of inheritance;
- C. A gift received from a relative or from an individual on the basis of a personal friendship as long as that individual is not a registered lobbyist or lobbyist associate under Title 3, section 313, unless the Legislator has reason to believe that the gift was provided because of the Legislator's official position and not because of a personal friendship;
- D. A subscription to a newspaper, news magazine or other news publication;
- E. Legal services provided in a matter of legislative ethics;
- F. A meal, if the meal is a prayer breakfast or a meal served during a meeting to establish a prayer breakfast; or
- G. A meal, if the meal is provided by industry or special interest organizations as part of the informational program presented to a group of public servants.

**5. Honorarium.** "Honorarium" means a payment of money or anything with a monetary resale value to a Legislator for an appearance or a speech by the Legislator. Honorarium does not include reimbursement for actual and necessary travel expenses for an

appearance or speech. Honorarium does not include a payment for an appearance or a speech that is unrelated to the person's official capacity or duties as a member of the Legislature.

**6. Immediate family.** "Immediate family" means a Legislator's spouse, domestic partner or dependent children.

**7. Income.** "Income" means economic gain to a person from any source, including, but not limited to, compensation for services, including fees, commissions and payments in kind; income derived from business; gains derived from dealings in property, rents and royalties; income from investments including interest, capital gains and dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; income from an interest in an estate or trust; prizes; and grants, but does not include gifts. Income received in kind includes, but is not limited to, the transfer of property and options to buy or lease, and stock certificates. "Income" does not include;

A. Alimony and separate maintenance payments; or

B. Campaign contributions recorded and reported as required by Title 21-A, chapter 13.

**8. Relative.** "Relative" means an individual who is related to the Legislator or the Legislator's spouse as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, domestic partner, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half sister, and includes the fiancé or fiancée of the Legislator.

**9. Self-employed.** "Self-employed" means that the person qualifies as an independent contractor under Title 39-A, section 102, subsection 13.

**10. Violation of legislative ethics.** "Violation of legislative ethics" means a violation of the prohibitions in section 1014 or 1015.

## **1 § 1013. Authority; procedures**

**1. Authority.** The commission has authority:

A. To issue, on request of any Legislator on an issue involving that Legislator, or on its own motion, written advisory opinions and guidance on problems or questions involving possible violations of legislative ethics;

B. To investigate complaints alleging violation of legislative ethics against any Legislator, to hold hearings on those complaints if the commission determines it is appropriate and to issue findings of fact together with its opinion; and

C. To administer the disclosure of sources of income by Legislators as required by this subchapter.

**2. Procedure.** The following procedures apply.

A. Requests for advisory opinions by members of the Legislature must be filed with the commission in writing and signed by the Legislator requesting the opinion and must contain such supporting data as the commission requires. Commission staff shall inform a Legislator upon that Legislator's request for an advisory opinion that written opinions issued by the commission are public and are submitted to the Clerk of the House and the Secretary of the Senate and entered into the legislative record. When preparing an advisory opinion on its own motion, the commission shall notify the Legislator concerned and allow the Legislator to provide additional information to the commission. In preparing an advisory opinion, either upon request or on its own motion, the commission may make such an investigation as it determines necessary. A copy of the commission's advisory opinion must be sent to the Legislator concerned and to the presiding officer of the legislative body of which the Legislator is a member.

**B. (REPEALED)**

B-1. Any person may file a complaint against a Legislator alleging a violation of legislative ethics only as described in section 1014 and 1015. The complaint must be filed in writing and signed under oath and must specify the facts of the alleged violation citing the specific provisions of sections 1014 and 1015 that are alleged to have been violated, the approximate date of the alleged violation and such other information as the commission requires. A complainant shall agree in writing not to disclose any information about the complaint during the time the commission is determining whether or not to pursue the complaint or during the investigation of a complaint. A complaint that does not meet the criteria of this paragraph is considered incomplete and will not be forwarded to the commission.

(1) The Legislator against whom a complaint is filed must immediately be given a copy of the complaint and the name of the complainant.

(2) The commission shall consider only complaints against Legislators in office at the time of the filing of the complaint and only complaints relating to activity that occurred or was ongoing within two (2) years of the complaint. Upon a majority vote of the commission, the commission shall conduct an investigation and hold hearings as it determines necessary.

(3) The commission shall issue its findings of fact together with its opinion regarding the alleged violation of legislative ethics to the legislative body of which the Legislator concerned is a member. That legislative body may take whatever action it determines appropriate, in accordance with the Constitution of Maine.

(4) If the commission determines that a Legislator has potentially violated professional standards set by a licensing board, its opinion and such other information as may be appropriate must be referred to the licensing board that oversees the Legislator's professional conduct.

C. When the conduct of a particular Legislator is under inquiry and a hearing is to be held, the Legislator must be given written notification of the time and place at which



the hearing is to be held. Such notification must be given not less than ten (10) days prior to the date set for the hearing.

D. The commission has authority, through its chair or any member designated by the chair, to administer oaths, subpoena witnesses and compel the production of books, records, papers, documents, correspondence and other material and records the commission determines relevant. The State, its agencies and instrumentalities shall furnish to the commission any information, records or documents the commission designates as being necessary for the exercise of its functions and duties. In the case of refusal of any person to obey an order or subpoena of the commission, the Superior Court, upon application of the commission, has jurisdiction and authority to require compliance with the order or subpoena. Any failure of any person to obey an order of the Superior Court may be punished by that court as a contempt thereof.

E. The commission shall adopt rules consistent with due process for the conduct of investigations and hearings under this subchapter. Rules adopted pursuant to this paragraph are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

The commission is not bound by the strict rules of evidence, but its findings and opinions must be based upon competent and substantial evidence.

E-1. The commission may permit the complainant to make a presentation to the commission as part of its consideration whether to conduct an investigation or public hearing.

F. If the commission concludes that it appears that a Legislator has violated a criminal law, a copy of its findings of fact, its opinion and such other information as may be appropriate must be referred to the Attorney General. Any determination by the commission or by a legislative body that a violation of legislative ethics has occurred does not preclude any criminal action relating to the violation that may be brought against the Legislator.

G. If the commission determines that a complaint filed under oath is frivolous or filed in bad faith or if the complainant fails to appear at the hearing without being excused by the commission, the commission may order the complainant to pay to the Legislator against whom the complaint has been filed that Legislator's costs of investigation and defense, including any reasonable attorney's fees. This order is considered a final agency action, and the complainant may appeal the order pursuant to the Maine Administrative Procedure Act. If the commission determines that the complaint was filed in bad faith, the commission shall refer the case to the Attorney General for investigation.

Such an order does not preclude any other remedy available to the Legislator against whom the complaint has been filed, including, but not limited to, an action brought in Superior Court against the complainant for damages to the Legislator's reputation.

H. The commission shall file with the Clerk of the House and the Secretary of the Senate a copy of written advisory opinions and guidance issued by the commission that were formally requested by a Legislator and that were considered by the commission at a public meeting, with such deletions and changes as the commission considers necessary to protect the identity of the person seeking the opinions or others.

The Clerk of the House shall keep a copy of such opinions and guidance in a special binder and shall finally publish them in the Legislative Record. The commission may exempt an opinion or a part of an opinion from release, publication or inspection if it considers such action appropriate for the protection of third parties and makes available to the public an explanatory statement to that effect.

I. A copy of the commission's findings of fact and opinions regarding complaints against Legislators must also be filed with the Clerk of the House and the Secretary of the Senate. The Clerk of the House shall keep them in a special binder and shall finally publish them in the Legislative Record.

J. (REPEALED).

K. When a Legislator has a question or problem of an emergency nature about a possible violation of legislative ethics or an issue involving that Legislator that arises during the course of legislative action, the Legislator may request an advisory opinion from the presiding officer of the legislative body of which the Legislator is a member. The presiding officer may issue an advisory opinion. An advisory opinion issued by the presiding officer must be in accordance with the principles of this subchapter, be in writing and be reported to the commission. The commission may then issue a further opinion on the matter. The presiding officer may refer such a question or problem directly to the commission, which shall meet as soon as possible to consider the question or problem.

L. The commission shall make reasonable efforts to resolve a complaint within 90 days of its filing.

### **3. Confidentiality. (REPEALED)**

**3-A. Confidentiality of records and proceedings relating to screening complaints alleging a violation of legislative ethics.** Notwithstanding chapter 13, a complaint alleging a violation of legislative ethics is confidential and is not a public record until after the commission has voted pursuant to subsection 2, paragraph B-1 to pursue the complaint, and a commission proceeding to determine whether to pursue a complaint must be conducted in executive session. If the commission does not vote to pursue the complaint, the complaint and records relating to the investigation of that complaint remain confidential and are not public records unless the Legislator against whom the complaint is made submits a written request that the complaint and all accompanying materials be made public. This subsection does not prohibit a complainant from disclosing information that the complainant provided to the commission as part of the complaint or investigation once the commission has determined not to pursue the complaint or the investigation of a complaint is complete. This subsection does not prevent the commission from including general information about complaints in any report to the Legislature. Any person who knowingly breaches the confidentiality of a complaint investigation commits a Class D crime. This subsection does not prevent commission staff from disclosing information to a person from whom the commission is seeking information or evidence relevant to the complaint that is necessary to investigate the complaint or prevent the complainant or the Legislator against whom the complaint is made from discussing the complaint with an attorney or other person assisting them with the complaint. The commission or commission staff shall inform any person with whom they

communicate of the requirement to keep any information regarding the complaint investigation confidential.

**4. Confidentiality of records other than complaints.** Commission records other than complaints are governed by this subsection.

A. Investigative records relating to complaints that the commission has voted to pursue are confidential unless they are provided to commission members or otherwise distributed at a public hearing of the commission.

B. Legislators' statements of sources of income are public records.

C. Findings of fact and recommendations of the commission on complaints alleging violation of legislative ethics are public records.

D. Advisory opinions of the commission and requests for advisory opinions from the commission are public records, except as provided in subsection 2, paragraph H.

**5. Prohibited communications.** Communications concerning a complaint filed under this section between commission members and a complainant or between commission members and the subject of a complaint are prohibited until after the commission has voted not to pursue a complaint or the commission has taken final action on the complaint.

## **1 § 1014. Violations of legislative ethics**

**1. Situations involving conflict of interest.** A Legislator engages in a violation of legislative ethics if that Legislator votes on a question in connection with a conflict of interest in committee or in either body of the Legislature or attempts to influence the outcome of that question unless a presiding officer in accordance with the Joint Rules of the Legislature requires a Legislator to vote or advises the Legislator that there is no conflict in accordance with section 1013, subsection 2, paragraph K. A conflict of interest includes:

A. When a Legislator or a member of the Legislator's immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise that would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation;

B. When a Legislator or a member of the Legislator's immediate family accepts gifts, other than campaign contributions duly recorded as required by law, from persons affected by legislation or who have an interest in an entity affected by proposed legislation and the Legislator knows or reasonably should know that the purpose of the donor in making the gift is to influence the Legislator in the performance of the Legislator's official duties or vote or is intended as a reward for action on the Legislator's part;

C. Receiving compensation or reimbursement not authorized by law for services, advice or assistance as a Legislator;

D. Appearing for, representing or advocating on behalf of another before the Legislature, unless without compensation and for the benefit of a citizen;

E. When a Legislator or a member of the Legislator's immediate family accepts or engages in employment that could impair the Legislator's judgment, or when the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded the Legislator or a member of the Legislator's immediate family with intent to influence the performance of the Legislator's official duties, or when the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community; and

F. When a Legislator or a member of the Legislator's immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of the Legislator's immediate family is engaged, and the benefit derived by the Legislator or a member of the Legislator's immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.

## **2. Undue influence. (REPEALED)**

**2-A. Undue influence.** It is a violation of legislative ethics for a Legislator to engage in conduct that constitutes the exertion of undue influence, including, but not limited to:

A. Appearing for, representing or advocating for another person in a matter before a state agency or authority, for compensation other than compensation as a Legislator, if the Legislator makes reference to that Legislator's legislative capacity, communicates with the agency or authority on legislative stationery or makes threats or implications relating to legislative action;

B. Appearing for, representing or advocating for another person in a matter before a state agency or authority if the Legislator oversees the policies of the agency or authority as a result of the Legislator's committee responsibilities, unless:

(1) The appearance, representation or advocacy is provided without compensation and for the benefit of a constituent;

(2) The Legislator is engaged in the conduct of the Legislator's profession and is in good standing with a licensing board, if any, that oversees the Legislator's profession;

(3) The appearance, representation or advocacy is provided before a court or office of the judicial branch; or

(4) The representation consists of filing records or reports or performing other routine tasks that do not involve the exercise of discretion on the part of the agency or authority; and

C. Representing or assisting another person in the sale of goods or services to the State, a state agency or a state authority, unless the transaction occurs after public notice and competitive bidding.

**3. Abuse of office or position.** It is a violation of legislative ethics for a Legislator to engage in conduct that constitutes an abuse of office or position, including but not limited to:

A. When a Legislator or a member of the Legislator's immediate family has a direct financial interest or an interest through a close economic associate in a contract for

goods or services with the State, a state agency or state authority unless the contract is awarded through competitive bidding or is exempt from competitive bidding pursuant to state purchasing laws or the payment provisions are based on uniform rates established by the State, a state agency, a state authority or other governmental entity;

B. Granting or obtaining special privilege, exemption or preferential treatment to or for oneself or another, which privilege, exemption or treatment is not readily available to members of the general community or class to which the beneficiary belongs; and

C. Use or disclosure of confidential information obtained because of office or position for the benefit of self or another.

**4. Contract with state governmental agency.** It is a violation of legislative ethics for a Legislator or an associated organization to enter with a state agency into any contract that is to be paid in whole or in part out of governmental funds unless the contract has been awarded through a process of public notice and competitive bidding or is exempt from competitive bidding pursuant to state purchasing laws.

#### **1 § 1015. Prohibited campaign contributions and solicitations**

**1. Actions precluded. (REPEALED)**

**2. Reports. (REPEALED)**

**3. Campaign contributions and solicitations prohibited.** The following provisions prohibit certain campaign contributions and solicitation of campaign contributions during a legislative session.

A. As used in this subsection, the terms "employer," "lobbyist" and "lobbyist associate" have the same meanings as in Title 3, section 312-A. As used in this subsection, "contribution" has the same meaning as in Title 21-A, section 1012 and includes seed money contributions defined in Title 21-A, section 1122, subsection 9.

B. The Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate or employer during any period of time in which the Legislature is convened before final adjournment, except for a qualifying contribution as defined under Title 21-A, section 1122, subsection 7. A lobbyist, lobbyist associate or employer may not intentionally give, offer or promise a contribution, other than a qualifying contribution, to the Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer during any time in which the Legislature is convened before final adjournment. These prohibitions apply to contributions directly and indirectly solicited or accepted by, or given, offered and promised to a political action committee, ballot question committee or party committee of which the Governor, a member of the Legislature, a constitutional officer or the staff or agent of these officials is a treasurer, officer or primary fund-raiser or decision maker.

C. This subsection does not apply to:

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JAMES E. TIERNEY  
ATTORNEY GENERAL



STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333

June 10, 1983

Honorable John L. Martin  
Speaker of the House  
State House, Station #2  
Augusta, ME 04333

Dear Speaker Martin:

In your capacity as presiding officer of the House of Representatives you have requested an opinion from this Office as to whether an advisory opinion issued by the Commission on Governmental Ethics and Election Practices on May 31, 1983, in response to a request from Representative Elizabeth H. Mitchell, is incorrect as a matter of law. For the reasons discussed below, it is the opinion of this Office that Representative Mitchell would not be involved in a conflict of interest, within the meaning of 1 M.R.S.A. § 1014(1)(A), should she vote on Legislative Document 1353.

Prior to addressing your specific inquiry, it is important to emphasize that the opinions of both the Commission and this Office are advisory only, and that ultimately it is for the particular member of the Legislature in question to determine whether to be bound by either opinion.

Factual Background

In a letter dated May 17, 1983, Representative Mitchell requested the Commission on Governmental Ethics and Election Practices to issue an advisory opinion, pursuant to 1 M.R.S.A. § 1013(2)(A), as to whether her vote on L.D. 1353 (AN ACT to Limit Future Increases in the Cost of Hospital Care in Maine)

- 2 -

would constitute a conflict of interest in view of the fact that her husband, an attorney, provides legal representation to the Maine-Dartmouth Family Practice Residency, an association of physicians affiliated with the Kennebec Valley Medical Center. The facts, as outlined in Representative Mitchell's letter to the Commission, are reprinted in their entirety below:

The facts are as follows: My husband, James Mitchell, Esq., maintains a private law practice. For the past several years Jim has provided legal advice and counsel for the Maine-Dartmouth Family Practice Residency in Augusta, Maine, an association of doctors that provide medical services to the general public. The Residency is affiliated with the Kennebec Valley Medical Center. As part of his ongoing relationship with the Residency, which provides less than 10% of his total income, Jim has been asked to provide and has provided legal advice, interpretation and counsel concerning the hospital cost containment bill (L.D. 1353) pending before this session of the Legislature. At the Residency's request, he has advised them as to the potential impact of the bill and has drafted certain amendments which the Residency may use in communicating with various legislators concerning the bill. He has not engaged in "lobbying" as that term is defined in 3 M.R.S.A. § 312 (8).

In short, the facts as presented by Representative Mitchell reveal that her husband provides legal services to the Family Practice Residency, including advice on L.D. 1353, and is compensated therefor.

On May 31, 1983, four<sup>1</sup>/<sub>1</sub> members of the Commission concluded that "[b]ased on the information contained in your letter, it is the opinion of the Commission that your voting on L.D. 1353 would constitute a conflict of interest pursuant to M.R.S.A. § 1014(1)(A)." It is our understanding that the House of Representatives voted on L.D. 1353 on June 9, 1983 and that Representative Mitchell abstained. The Commission did not

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<sup>1</sup>/<sub>1</sub> Two members of the Commission recused themselves because of conflicts of interest on the question and one member was absent.

- 3 -

explain the basis of its opinion other than to state that a vote by Representative Mitchell on L.D. 1353 would violate 1 M.R.S.A. § 1014(1) (A).

### The Statutory Framework

By virtue of Chapter 621 of the Public Laws of 1975, the Legislature has established the Commission on Governmental Ethics and Election Practices consisting of seven members who may not be members of the Legislature. 1 M.R.S.A. § 1002. The Commission is specifically authorized to issue advisory opinions to Legislators "on problems or questions involving possible conflicts of interest in matters under consideration by, or pertaining to, the Legislature." 1 M.R.S.A. § 1013(1) (A). In enacting P.L. 1975, c. 621, the Legislature clearly articulated the "statement of purpose" underlying the statutes governing legislative ethics. In particular, the Legislature recognized that being a Legislator in Maine "is not a full-time occupation. . . ." and that "[m]ost Legislators must look to income from private sources, not their public salaries, for their sustenance and support for their families. . . ." 1 M.R.S.A. § 1011. In view of this fact, the Legislature intentionally adopted "broader standards of ethics for Legislators" because, as a practical matter, "the resolution of ethical problems must indeed rest largely in the individual conscience." *Id.* Nevertheless, for the purpose of providing "helpful advice and guidance," the Legislature recognized the need to statutorily "define ethical standards, . . . to chart the area of real or apparent impropriety." *Id.*

Accordingly, the Legislature, in 1 M.R.S.A. § 1014, has set forth a description of those situations in which a Legislator may be involved in a conflict of interest. Subsections 1(A)-(F) deal specifically with the subject of legislative conflicts of interest.<sup>2/</sup> For purposes of this Opinion, we need only consider subsections 1(A), 1(E), and 1(F), which are the provisions of law which have direct relevance to Representative Mitchell's situation.

1 M.R.S.A. § 1014(1) (A) provides in its entirety as follows:

1. A conflict of interest shall include the following:

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<sup>2/</sup> Subsections 2 and 3 deal with the issues of "undue influence" and "abuse of office" and have no relevance for purposes of this Opinion.



- 4 -

A. Where a Legislator or a member of his immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise which would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation. (emphasis added)

1 M.R.S.A. § 1014(1)(E) provides, in pertinent part, that a conflict of interest exists

E. Where a Legislator or a member of his immediate family accepts or engages in employment which could impair the Legislator's judgment, . . . or where the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or loss of other employees or the general community.

Finally, 1 M.R.S.A. § 1014(1)(F) provides that a conflict of interest arises

F. Where a Legislator or a member of his immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of his immediate family is engaged, where the benefit derived by the Legislator or a member of his immediate family member is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.

In concluding that Representative Mitchell's vote on L.D. 1353 would create a conflict of interest, the Commission relied exclusively on 1 M.R.S.A. § 1014(1)(A). However, it is obvious from a reading of that statute that the first clause of subsection (1)(A) has no application to the situation presented by Representative Mitchell since neither she nor her husband have "a direct substantial financial interest, distinct from

- 5 -

that of the general public in an enterprise which would be financially benefited by proposed legislation." Based upon the facts as recited by Representative Mitchell, her husband does not have a financial interest in the Family Practice Residency, but is simply providing legal services to a client for which he is compensated. Moreover, it is apparent that the Family Practice Residency, even assuming it is an "enterprise," although affected, will not receive a direct financial benefit which is foreseeable from either the passage or defeat of L.D. 1353.

Consequently, in determining whether the Commission correctly opined that Representative Mitchell would be involved in a conflict of interest, it is necessary to focus on the second clause of subsection (1)(A), which provides that a conflict of interest exists "[w]here a legislator or a member of his immediate family . . . derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation."

In addressing this question, we are guided by the fact that a Legislator's "immediate family" is statutorily defined to include her spouse, (1 M.R.S.A. § 1012(2)), and that the phrase "close economic association includes the employers, employees, partners or clients of the Legislator or a member of his immediate family." (1 M.R.S.A. § 1012(1)). Thus, the issue becomes (1) whether Representative Mitchell's spouse derives a direct substantial personal financial benefit by virtue of the fact that he provides legal services, for a fee, to a client and (2) whether that benefit will derive from a client who has a direct financial interest in an enterprise affected by L.D. 1353. Based on the facts as presented by Representative Mitchell, it is the opinion of this Office that no violation of 1 M.R.S.A. § 1014(1)(A) exists.

In view of the lengthy legislative history of P.L. 1975, c. 621, it is clear that the Legislature never intended that a member of either House must be disqualified from voting on a proposal merely because she or a member of her immediate family is compensated for work performed for an employer or a client who might be affected by the legislation. The "direct substantial personal financial benefit" referred to in 1 M.R.S.A. § 1014(1)(A) must involve a financial reward separate and distinct from the remuneration one receives as an employee or agent for services rendered. This was made abundantly clear by several members of the 106th Legislature which enacted the precursor of 1 M.R.S.A. § 1014(1)(A). See P.L. 1974, c. 773, codified at 3 M.R.S.A. § 382, repealed and

- 6 -

replaced by P.L. 1975, c. 621. The Senate Chairman of the State Government Committee and at least two House members of that Committee, which reported out favorably the original legislative ethics bill, clearly stated that a Legislator would not be involved in a conflict of interest simply because she or her spouse is an employee or attorney for a person with a financial interest in proposed legislation. See 2 Legis. Rec. 2206 (1974) (statement of Senator Speers); 2 Legis. Rec. 2227 (1974) (statement of Representative Curtis); 2 Legis. Rec. 2458 (1974) (statement of Representative Gahagan). Rather, the financial benefit to the Legislator or her immediate family member must be directly related to and derived from the proposed legislation which affects the enterprise in which the employer or client has a direct financial interest.

In short, § 1014(1) (A) does not prevent a Legislator from voting on a measure unless she or a member of her immediate family will receive a financial benefit either directly or through a third party, by virtue of the proposed legislation. To suggest otherwise, leads to the conclusion, clearly not contemplated by the Legislature, that any Legislator employed in the private sector must abstain from voting on legislative matters which affect the profession or business in which the Legislator is employed. Such a view conflicts with the plain meaning of the statute and its legislative history and would render subsections 1(E) and 1(F) superfluous.

In view of the foregoing, it is apparent that Representative Mitchell's husband does not fall within the ambit of § 1014(1) (A). He will not derive a personal financial benefit from either passage or defeat of L.D. 1353. On the contrary, he is simply being compensated for providing legal representation to a client.

Accordingly, it is the opinion of this Office that the Commission on Governmental Ethics and Election Practices was incorrect as a matter of law in its interpretation of 1 M.R.S.A. § 1014(1) (A) and its conclusion that Representative Mitchell would be in a conflict of interest had she voted on L.D. 1353. In reaching this conclusion, of course, we recognize, as the Legislature has, that "the resolution of ethics problems must indeed rest largely in the individual conscience" (1 M.R.S.A. § 1011) and that a Legislator may, as a matter of individual choice, abstain from voting on proposed legislation notwithstanding the fact that she is not required by law to do so.

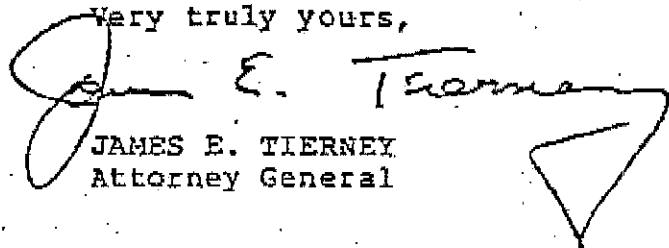
Finally, the Legislature has repeatedly recognized and endorsed the concept of a part-time Legislator. This opinion, therefore, should be read broadly to include, not only an

- 7 -

attorney who represents a hospital, but also direct employees of health care institutions and trustees of not-for-profit institutions on the same theory outlined in this opinion. This opinion holds that the purpose of the conflict of interest statute is to prohibit the use of legislative office for private gain. Indeed, there is affirmative legislative history supporting the view that the conflict of interest laws were not designed to frustrate the legitimate attempts by publicly elected officials to use their personal experience in attempting to solve the problems of our State.

I hope this information is helpful to you. Please feel free to call upon this Office if we can be of further assistance.

Very truly yours,

A handwritten signature in dark ink, appearing to read "James E. Tierney". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail that extends to the right, ending in a small triangle.

JAMES E. TIERNEY  
Attorney General

JET:mfe

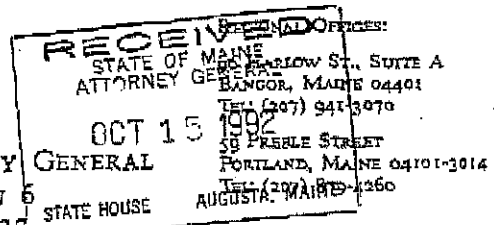


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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE HOUSE STATION 6  
AUGUSTA, MAINE 04333



October 2, 1992

The Honorable Santo DiPietro  
Maine House of Representatives  
State House Station 3  
Augusta, Maine 04333

The Honorable Jeffrey Butland  
Maine House of Representatives  
State House Station 3  
Augusta, Maine 04333

Dear Representatives DiPietro and Butland:

This will respond to your letter to Attorney General Michael E. Carpenter dated October 2, 1992 requesting this Office to provide "written guidance outlining the obligations of . . . lawyer-legislators under the Governmental Ethics Law," with specific reference to proposed legislation and any related amendments thereto which would implement the recommendations of the Blue Ribbon Commission on Workers' Compensation. Specifically, you have indicated that you have called "for lawyers who are members of the Legislature who practice, or whose firms practice, workers' compensation insurance law, to voluntarily disclose their interest prior to voting on any reform measures."

Your inquiry raises two distinct issues. First, whether a lawyer-legislator who practices, or whose firm practices, workers' compensation law has any conflict of interest with respect to voting on any reform measure dealing with workers' compensation. Second, whether, regardless of any conflict of

interest, lawyer-legislators are required to disclose the sources of their income from the practice of law, and in particular, from the practice of workers' compensation law.

The Legislature has provided specific guidance to its members on the issue of what constitutes a conflict of interest. See 1 M.R.S.A. § 1014. The "Statement of Purpose" underlying the statutes governing legislative ethics recognizes that being a legislator in Maine "is not a full-time occupation . . ." in that "[m]ost legislators must look to income from private sources, not their public salaries for their sustenance and support for their families . . ." 1 M.R.S.A. § 1011. The Legislature intentionally adopted "broader standards of ethics for legislators" because, as a practical matter, "the resolution of ethical problems must indeed rest largely in the individual conscience." *Id.* Nevertheless, for the purpose of "providing helpful advice and guidance" the Legislature recognized the need to statutorily "define ethical standards, . . . to chart the area of real or apparent impropriety." *Id.*

With this general background in mind, it is possible to briefly address the specific provisions of the legislative ethics law. In our view, the one provision which is most closely relevant to your inquiry is 1 M.R.S.A. § 1014(1)(F) which provides that a conflict of interest situation exists

Where a Legislator or a member of his immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of his immediate family is engaged, where the benefit derived by the Legislator or a member of his immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.

We have previously indicated that this provision requires that the benefit derived by the legislator be "unique and distinct" from the benefit that may be derived by persons engaged in similar professions. In this particular situation, a legislator who happens to be a lawyer engaged in workers' compensation law or whose firm engages in workers' compensation law, would not be receiving any benefit which is unique and distinct from what other persons engaged in that line of work

would receive. Attached please find two prior opinions from this Office on this point.<sup>1/</sup>

On the issue of disclosure of a lawyer-legislator's financial interest, we would point out that there is also legislation requiring legislators to file a statement of specific sources of income. See 1 M.R.S.A. § 1016-A (a copy of which is attached). Subsection 1(D) deals specifically with the legislator who is also an attorney and provides:

The legislator filing the statement shall name and give the address of each specific source of income received as follows:

D. With respect to income from a law practice, it shall be sufficient for attorneys-at-law to indicate their major areas of practice and, if associated with a law firm, the major areas of practice of the firm, in such manner as the commission may require.

In view of the forgoing, lawyer-legislators are already required to provide certain information concerning their sources of income, including the major areas of their law practice and the major areas of the practice of their firms. Whether a particular lawyer-legislator wishes to provide

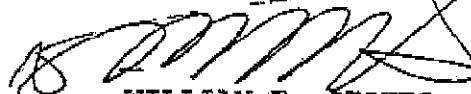
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<sup>1/</sup>The only other provision of the legislative ethics law which even arguably relevant to your inquiry is 1 M.R.S.A. § 1014(1)(E) which provides in part that a conflict of interest situation exists "where a legislator or a member of his immediate family . . . engages in employment which could impair the legislator's judgment . . . ." In the past, we have interpreted this provision to reach those situations where certain types of employment, by their very nature, might cause an impairment of the legislator's judgment in a particular matter. In our view, there is no reason why a lawyer-legislator who happens to practice workers' compensation law cannot exercise his or her best judgment as a legislator with respect to this proposed legislation. In other words, there is nothing about being a lawyer engaged in the practice of workers' compensation law that, by its very nature, would impair that legislator's judgment.

additional information on a voluntary basis is purely up to that individual legislator.

We hope this information is helpful to you and please do not hesitate to contact us if we can be of further assistance.

Sincerely,



WILLIAM R. STOKES  
Assistant Attorney General

WRS/dls

enclosures

cc: The Honorable John L. Martin, Speaker of the House  
The Honorable Charles Pray, President, Maine State Senate





STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

March 12, 2007

Hon. Thomas B. Saviello  
60 Applegate Lane  
Wilton, Maine 04294

Dear Rep. Saviello:

This opinion is in response to your request for guidance on whether it would be a conflict of interest for you to vote on L.D. 437. The legislation creates an exception to the assessment of fines and civil penalties for oil spills if the amount spilled is 50 gallons or less and other required conditions are present. You work as the Environmental Manager of the Androscoggin paper mill owned by Verso Paper Holdings LLC. In that position, you oversee the mill's compliance with the state's environmental laws, including oil spill reporting requirements.

At its meeting on March 9, 2006, the Commission voted 3-0 that it would not be a conflict of interest for you to vote on L.D. 437.<sup>1</sup> The Commission analyzed the question under 1 M.R.S.A. §1014(1)(F):

Where a Legislator or a member of his immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of his immediate family is engaged, where the benefit derived by the Legislator or a member of his immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment. (underlining added)

The Commission received testimony from an interested party that the bill could affect Verso Paper's "bottom line" by reducing its administrative costs and could affect your reputation in the company. You testified that measures required by the bill to avoid fines or penalties would impose other costs. The Commission staff outlined an allegation made in a March 2006 complaint against your involvement in similar legislation: that the previous owner of the Androscoggin mill had the largest number of spills reported to the Maine Department of Environmental Protection in a three-year period.

The Commission concluded that you would not derive a benefit from L.D. 437 that was unique and distinct from other persons engaged in similar professions or trades. It

<sup>1</sup> Commission members Michael Friedman, Vinton Cassidy, and I approved this advisory opinion. Members Mavourneen Thompson and Andrew Ketterer were not present for this matter.

Hon. Thomas B. Saviello

- 2 -

March 12, 2007

observed that the bill would have an impact on a large number of businesses in the state, and that you did not seem to have a direct financial interest in the legislation. It noted that the legislative ethics law imposes a high burden to prove a conflict of interest, and that the law has been interpreted to allow teachers and other professionals serving in the Legislature to vote on bills that broadly affected members of their profession.

The Commission concluded, therefore, that it would not be a conflict for you to vote on L.D. 437. It also encouraged you to seek the guidance of the Commission's Executive Director on possible conflicts of interest, where it is feasible for him to give you advice.

Sincerely,



Jean Ginn Marvin  
Commission Member